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Administrative Law -- Power of Board of Education to Abolish Fraternities

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Footnotes which contain material other than a mere listing of sources and authorities are indicated throughout this REVIEW *by an asterisk placed after the footnote number.*

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NOTES AND COMMENTS

Administrative Law†—Power of Board of Education to Abolish Fraternities*

In May, 1941, the defendant Board of Education of Durham published resolutions making known its disapproval of high school frater-

† As far as possible only cases dealing with the regulation of secret societies in public schools are used in this note.

* "The first Greek letter society in a secondary school was Alpha Phi, a literary society, which became a part of a fraternity in 1876. Subsequently secret societies, patterned after college and university fraternities, sprang into existence all over the country. . . . In time many educators came to believe that whatever good might be claimed for college fraternities was not shared by secret fraternities organized by boys and girls attending preparatory schools whose characters were not yet formed. It has been said of such societies that they tend to engender an undemocratic spirit of caste, to promote cliques, and to foster a contempt for school authority. Doubtless these organizations have many redeeming features, and, we may say, the standard of excellence of some of them is such that they are not opposed by school authorities." "Report of Commissioner of Education," *Annual Reports of the Dept. of Int.*, Vol. 1, pp. 447, 441 (1907). Cited in Bradford v. Board of Education, 18 Cal. App. 19, 121 Pac. 929 (1912).

nities, and appealed for the cooperation of both students and parents. The situation, however, became worse rather than better. After an investigation at the request of both parents and citizens, the Board adopted a further resolution in April, 1943, designed to eliminate secret fraternities and sororities from the public schools. This resolution required each student to sign a pledge indicating that he was not a member of any secret society not approved by the Board, and that he would not join one while in school. By failure to sign this pledge the student forfeited his right to take part in extra-curricular activities. The resolution was to go into effect at the beginning of the Fall Term, 1943. At the time of the adoption of the resolution, a copy was mailed to the parents residing within the school district. In September, prior to the opening of the Fall Term, the plaintiff, who was a member of the Phi Kappa Delta Fraternity and duly enrolled in the Senior High School, sought a restraining order to prevent the resolution's going into effect. Plaintiff alleged that the resolution threatened to deprive him of the right to become a member of the football team and to enjoy other extra-curricular advantages guaranteed him by the public laws of the state and the Fourteenth Amendment to the Federal Constitution. On defendant's demurrer the court dismissed the action, holding that the findings and conclusions of the local School Board fixing rules and regulations for the government of schools are conclusive unless the Board acts corruptly, in bad faith, or in clear abuse of its powers. The court will interfere only when necessary to prevent such arbitrary action. Nor does the act deprive the plaintiff of any right guaranteed by the Fourteenth Amendment to the Federal Constitution.[1]

The word "fraternities" occurring in an Indiana statute was held to include organizations of either or both sexes.[2] A California court has said: "In order that a fraternity may be secret, a promise or an agreement must be made by its members not to reveal its proceedings or secret work and as to various other matters, which undertaking is doubtless invariably in the form of a pledge, an obligation, or of a non-judicial oath. As here used the compound word 'oath-bound' is synonymous with the word 'secret.'"[3]

May a student be denied admission to a public school because of fraternity membership? The courts are divided on the question. In an early Indiana case the court held that the trustees and faculty of Purdue University could not refuse admission to a duly qualified student merely because he was a member of a secret society.[4] In a later case when the

[1] Coggins v. Board of Education, 223 N. C. 763, 28 S. E. (2d) 527 (1944).
[2] State v. Allen, 189 Ind. 369, 127 N. E. 145 (1920).
[3] Bradford v. Board of Education, 18 Cal. App. 19, 26, 121 Pac. 929, 932 (1912).
[4] Stallard v. White, 82 Ind. 278, 42 Am. St. Rep. 496 (1882).

Mississippi Legislature abolished the college fraternities, the Mississippi Court held a regulation by the trustees, making it a condition precedent that the student must sign a pledge of non-fraternity affiliation while in college, to be within the rights and duties of the trustees, and not a violation of any constitutional rights.[5]

Once a student is duly enrolled in a public or private school, he becomes subject to such rules and regulations concerning secret societies as are adopted for the government of the institution. Although he cannot be prohibited from joining a fraternity,[6] laws or regulations subjecting him to expulsion,[7] or refusing to give him credit for his work[8] or to grant him a diploma,[9] or debarring him from special privileges such as athletics, literary functions, or military affairs[10] have been held to be valid. Such rules merely make it optional for the student to determine whether he prefers membership in the secret society and forfeits such educational privileges as are granted him, or desires to forfeit membership in the society and receive those privileges.[11] Even under compulsory education it has been held that a student is not entitled to attend public schools regardless of his conduct, but he is subject to such reasonable rules for the government of schools as the trustees thereof may see fit to adopt.[12*]

Where the meetings of the society are held in the homes of parents after school hours, it must be shown clearly that the act complained of reaches within the school room and affects the conduct and discipline before any regulation of secret societies may be valid.[13*] "If the effects of acts done out of school reach within the school during school hours, and are detrimental to good order and the best interests of the

[5] Waugh v. Miss. Univ., 273 U. S. 589, 35 Sup. Ct. 720, 59 L. ed. 1131 (1913).
[6] *See* People *ex rel.* Pratt v. Wheaton College, 40 Ill. 186 (1866).
[7] Smith v. Board of Education, 182 Ill. App. 342 (1913); People *ex rel.* Pratt v. Wheaton College, 40 Ill. 186 (1866).
[8] Steele v. Sexton, 253 Mich. 32, 234 N. W. 436 (1931).
[9] Board of Trustees of Miss. Univ. v. Waugh, 105 Miss. 623, 62 So. 827 (1913), *aff'd*, 237 U. S. 589, 35 Sup. Ct. 720, 59 L. ed. 1131 (1913).
[10] Wayland v. School Directors, 43 Wash. 441, 85 Pac. 642, 7 L. R. A. (N. S.) 352 (1906).
[11] Coggins v. Board of Education, 223 N. C. 763, 28 S. E. (2d) 527 (1944).
[12*] *See* McLeod v. State, 154 Miss. 468, 122 So. 737 (1929) (A rule by a school board prohibiting married students from attending public schools was arbitrary and unreasonable, however; and therefore void.).
[13*] In Wright v. Board of Education, 295 Mo. 466, 246 S. W. 43 (1922), the court held that the domain of the teacher ceases when the child reaches its home, unless his actions, if permitted, would seriously interfere with the management and discipline of the school. No facts were shown whereby the management and conduct of the school was affected. On the other hand the court in Wayland v. Board of School Directors, 43 Wash. 441, 86 Pac. 642 (1906), held that a rule prohibiting membership in a secret society was valid, even though meetings were held in the homes of parents after school hours. Here the evidence showed that a clannish spirit of insubordination was fostered, resulting in much evil to the good order, discipline, and general welfare of the school.

pupils, it is evident that such acts may be forbidden."[14]* Such a rule by a School Board may be impliedly regarded as a disciplinary measure.[15]

At least sixteen states have prohibited fraternities in elementary and secondary public schools, but no state now excludes them in colleges and universities.[16]* In other states where the problem has arisen, there have been statutes vesting general administrative and governing power in the Board of Education or trustees sufficient for necessary regulation.[17] Such a delegation of power by the legislature does not render a statute invalid.[18] As an administrative agency a School Board has power to make rules and regulations to govern the entire school program. Findings and conclusions by the Board are conclusive unless it acts corruptly, in bad faith, or in clear abuse of its powers.[19] A court will intervene only to prevent arbitrary and unreasonable action.[20]* If the regulations are within the powers conferred upon the Board by the legislature and pertain to matters in which the Board is vested with authority, it has been held that the courts cannot review such acts.[21]*

[14]* Burdick v. Babcock, 31 Iowa 562, 567 (1871); *see* State *ex rel.* Clark v. Osborne, 24 Mo. App. 309 (1887), *aff'd*, 32 Mo. App. 536 (1888); Wayland v. Board of School Directors, 43 Wash. 441, 86 Pac. 642 (1906) (Publication of an article in "Gamma Eta Kappa," fraternity magazine, tended to destroy good order and discipline.).

[15] Wilson v. Board of Education, 223 Ill. 464, 84 N. E. 697, 15 A. L. R. (N. S.) 1136 (1938).

[16]* CAL. SCHOOL CODE (Deering, 1937) c. 134; COLO. STAT. ANN. (Michie, 1935) c. 146, §306; ILL. ANN. STAT. (Smith-Hurd, 1934) c. 122, §§699-703; IOWA CODE (Reichmann, 1939) §§4284-4287; KAN. GEN. STAT. ANN. (Corrick, 1935) §§72-5310, 72-5311; ME. REV. STAT. (1930) c. 19, §46; MICH. STAT. ANN. (Henderson, 1937) §§15-741 to 15-744; MISS. CODE ANN. (1940) §§6792-6797 (By Miss. Laws 1912, c. 177, the Legislature abolished all Greek letter societies in the public schools and colleges. However, in Miss. Laws 1926, c. 312, the Legislature permitted them to be established with the permission of the faculty in the State University. High school fraternities are still prohibited.); MONT. REV. CODES ANN. (Anderson & McFarland, 1935) §§1262.75-1262.77; NEB. COMP. LAWS (Dorsey, 1929) §79-2104; N. J. STAT. ANN. (1939) §18:14-11; OHIO GEN. CODE ANN. (Page, 1939) §§12906-12909; OKLA. STAT. ANN. (1938) tit. 70, 1121-1124; ORE. COMP. LAWS ANN. (1940) §§111-3004 through 111-3006; TEX. ANN. PEN. CODE (1938) art. 301-d; VT. PUB. LAWS (1933) §4264.

[17] See, for example, N. C. CODE ANN. (Michie, 1939) §§5410-5445.

[18] Sutton v. Board of Education, 306 Ill. 507, 138 N. E. 131 (1923); Lee v. Hoffman, 182 Iowa 1216, 166 N. W. 565, L. R. A. 1918C, 933 (1918).

[19] Finch v. Fractional School District, 225 Mich. 674, 196 N. W. 532 (1924); Tanton v. McKenney, 226 Mich. 225, 197 N. W. 510, 33 A. L. R. 1175 (1924); State *ex rel.* Dresser v. District, 135 Wisc. 619, 116 N. W. 232 (1908).

[20]* Christain v. Jones, 211 Ala. 161, 100 So. 99, 32 A. L. R. 1340 (1924); Pugsley v. Sellmeyer, 158 Ariz. 247, 250 S. W. 538, 30 A. L. R. 1212 (1923); State *ex rel.* School Dist. v. Trumper, 69 Mont. 468, 222 Pac. 1064 (1924); Cambell v. Bellvue School Dist., 328 Pa. 197, 195 Atl. 53, 113 A. L. R. 841 (1937) (In this case it was held that the court will interfere if it appears that the Board's action was based on misconception of law, or ignorance through lack of inquiry, or was the result of arbitrary will or caprice, or improper influences where in violation of the law.).

[21]* Security Nat'l Bank v. Bagley, 202 Iowa 701, 210 N. W. 947, 49 A. L. R. 705 (1926) (A School Board can authorize a corporation to install a savings system in the schools for the benefit of the students.).

Any rules and regulations by the Board which are regular on their face will be held valid in the absence of proof to the contrary.[22]

A statute or a regulation of a Board of Education governing secret societies is not unconstitutional as class legislation;[23] it does not abridge special privileges under the Fourteenth Amendment, since it is not a privilege arising out of United States Citizenship.[24] Neither do such rules deny the student equal protection of the laws,[25*] or deprive him of property without due process of law.[26*] Even statutes or School Board regulations which permit certain secret societies as exceptions to a general prohibition have been upheld.[27*]

Thus it appears that the holding in North Carolina is in accord with the principal cases dealing with secret societies in public schools.

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North Carolina Bastardy Statute—Support of Illegitimate Children—Statute of Limitations

A proceeding upon indictment for willful refusal and neglect to support one's illegitimate child must be brought within three years from the date of the child's birth, or within three years since the reputed father acknowledged paternity of the child by support made within the three years since its birth. This is the decision reached in the recent case of *State v. Dill,* where the court in a five to two decision held that both the criminal and the civil proceedings created by Ch. 228 of Public

[22] *See* Everts v. Rose Grove, 77 Iowa 37, 41 N. W. 478, 14 Am. St. Rep. 264 (1889).

[23] Lee v. Hoffman, 182 Iowa 1216, 166 N. W. 565, L. R. A. 1918C, 933 (1918).

[24] Bradford v. Board of Education, 18 Cal. App. 19, 121 Pac. 929 (1912).

[25*] Bryant v. Zimmerman, 278 U. S. 63, 49 Sup. Ct. 61, 73 L. ed. 184, 62 A. L. R. 785 (1928) (Such regulations do not violate the equality clause of the Fourteenth Amendment when applied to one class of oath-bound associations and not to another class, if the class so regulated has a tendency to make the secrecy of its purposes and membership a cloak for conduct inimical to the personal rights of others and to the public welfare, while the other class is free from that tendency.); *Ex parte* King, 157 Cal. 150, 154, 106 Pac. 578, 579 (1910) ("A law is general and constitutional when it applies equally to all persons, embraced in a class founded on some natural distinction. . . . The question whether the individuals affected by a law do not constitute such a class is primarily one for the legislative department of the state. . . . To warrant a court in adjudging the act void on this ground, it must clearly appear that there was no reason sufficient to warrant the legislative department in finding a difference and making the discrimination.").

[26*] Steele v. Sexton, 253 Mich. 32, 234 N. W. 436 (1931) (Neither does loss of right to school credit and a graduate's diploma, based on a willful violation of the statute, by any stretch of the imagination, constitute cruel and inhuman punishment.).

[27*] Bradford v. Board of Education, 18 Cal. App. 19, 121 Pac. 929 (1912) (Statute made it unlawful for a student to join any secret society except the orders of the Native Sons of the Golden West, Native Daughters of the Golden West, Foresters of America, and other kindred associations.).